

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

In The Matter Of:

ANGELINA OLIVAS,	)		
	)		
Complainant,	)		
	)	Charge No.	2000CF1538
and	)	ALS No.	11482
	)	EEOC:	21BA00909
CARRY COMPANIES n/k/a	)		
HOLLANDER DISTRIBUTION	)		
SYSTEMS, INC.,	)		
	)		
Respondent.	)		

SUPPLEMENTAL ORDER AND DECISION

Order and Decision issued: February 11, 2004  
Supplemental Order and Decision issued: July 13, 2004

The Commission by a panel of three:  
Commissioners David Chang, Yvette Kanter, and Marylee V. Freeman presiding.

On review of the recommended orders of William Hall, Administrative Law Judge.

For Complainant: Ashlee B. Highland  
Legal Assistance Foundation of Metropolitan Chicago  
Westside Office

For Respondent: Donald S. Rothschild & Seth D. Matus  
Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd.

Illinois Human Rights Commission: James E. Snyder, General Counsel,  
Matthew Z. Hammoudeh, Asst. General Counsel.

This matter comes before the Commission pursuant to a Recommended Order and Decision issued by Administrative Law Judge William H. Hall and exceptions filed thereto.

On review of Judge Hall's recommendations, the public hearing record and the

exceptions and response filed by the parties and for the reasons set forth herein, the recommendations of Judge Hall are sustained in part and modified in part.

IT IS HEREBY ORDERED THAT:

The findings of the Recommended Order and Decision are sustained, subject to the following modification: The Complainant's back pay is reduced to \$25,630.00.

I. Nature of the Case.

Angelina Olivas (Complainant) worked for Carry Companies (Respondent) as a warehouse employee from July of 1997 to November of 1999. The Complainant resigned on November 5, 1999 and filed a complaint alleging she was constructively discharged as a result of her national origin.

II. Proceedings.

A default judgment was entered against Respondent in this matter on February 28, 2001. On November 5th and 6th of 2001, Administrative Law Judge William Hall held a hearing on damages. He recommended that the Respondent be ordered to:

- a) Pay the Complainant the sum of \$41,086.00 for lost back pay;
- b) Pay the Complainant \$9,000.00 in emotional distress damages;
- c) Pay the Complainant prejudgment interest on the back pay award, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145; and
- d) Clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof and provide her with a neutral letter of reference.

Judge Hall found that the Complainant is entitled to damages consisting of \$41,086.00 in back pay and \$9,000.00 in emotional distress damages but denied Complainant's request for three years of front pay.

The Respondent filed exceptions and the Complainant filed a response to the exceptions.

III. Standard of Review.

In reviewing an Administrative Law Judges' Recommendation Order and Decision, the Commission does not conduct a *de novo* review of the evidence; rather, the Commission will adopt a Judge's findings unless they are demonstrated to be against the manifest weight of the evidence.

a) Back Pay Award

The Respondent argues that Judge Hall's conclusion that the Complainant is entitled to back pay damages is against the manifest weight of the evidence; further, Respondent argues that the recommended back pay award contains basic errors where Judge Hall calculated back pay erroneously, using calendar days rather than work days.

The Complainant argues that the Complainant is entitled to the back pay award in order to make her "whole" however agrees that the award should be reduced to \$35,109.40 where Judge Hall erroneously calculated the amount of back pay by using calendar days rather than work days and by using the wrong time period beginning in April rather than the date of the constructive discharge (November 5, 1999).

The Judge's recommendation that Respondent pay the Complainant the sum of \$41,086.00 for lost back pay is against the manifest weight of the evidence.

The Complainant is entitled to back pay for the 416 work-days that elapsed between April 1, 2000 and November 5, 2001, subject to reductions listed below. 416 days at the Complainant's rate of pay equals \$38,272.00 ( $\$11.50 \times 8 \times 416$ ).

That award is reduced by \$7,017, the unemployment benefits that the Complainant received and \$5,625, the amount that the Complainant received from another employer during the period of January 2001 to July 2001. Therefore, the Complainant is entitled to a back pay award of  $\$38,272.00 - \$7,017 - \$5,625 = \$25,630.00$ .

b) Emotional Distress Damages

The Respondent argues that Judge Hall's determination that Complainant is entitled to \$9,000.00 in emotional distress damages is against the manifest weight of the evidence and should be limited.

The Complainant argues that Judge Halls' finding of damages for emotional distress was not against the manifest weight of the evidence and that the Complainant is entitled to \$9,000.00 in emotional distress damages.

The Judge's recommendation that Complainant is entitled to emotional distress damages is not against the manifest weight of the evidence where the Judge found that Complainant's testimony was credible in determining that Respondent's discriminatory behavior resulted in many stresses on her; and that Respondent's conduct was sufficiently egregious to warrant emotional distress damages.

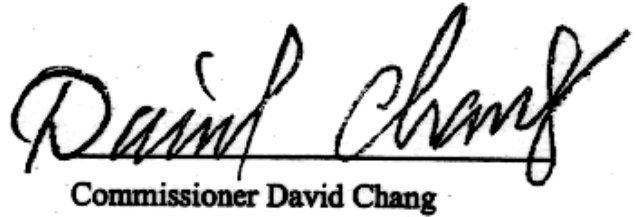
The Recommended Order and Decision issued in this case is sustained in part and modified in part and is incorporated herein as our Order and Decision.

This is a final order. The parties may seek rehearing of this Order and Decision by the Human Rights Commission en banc pursuant to 775 ILCS 5/8A-103 (F).

STATE OF ILLINOIS  
Entered this 13<sup>th</sup> day of July 2004.

HUMAN RIGHTS COMMISSION

  
Commissioner Yvette Kanter

  
Commissioner David Chang

  
Commissioner Marylee V. Freeman

(Panel B, Commissioners Kanter, Chang and Freeman)